

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2829

IN THE MATTER OF:

Served February 25, 1986

Application of CAPITOL BUS RENTAL,)
INC., trading as Capitol Tours,)
for Special Authorization to)
Conduct Charter Operations Pursuant)
to Contract with the U.S. Park)
Police)

Case No. CP-86-02

By application filed January 16, 1986, Capitol Bus Rental, Inc., 1/ trading as Capitol Tours ("Capitol" or "applicant"), seeks authority pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 to transport U.S. Park Police officers and persons traveling on official business of the U.S. Park Police between points in the Washington Metropolitan Area Transit District, except between points solely within the Commonwealth of Virginia. Order No. 2816, served January 21, 1986, generally described the evidence submitted with the application, and that order is incorporated by reference herein.

Operational Fitness

Order No. 2816 required applicant to explain how it intended to provide the subject service with the three vehicles listed in its application when these same three vehicles were leased to Blue Lines, Inc., and may be operated by none but lessee Blue Lines.

In response, Capitol states "if this application is granted Capital Bus Rental will amend its lease with Blue Lines, Inc., by terminating the lease of such equipment as is required for serving the U.S. Park Police."

1/ The application and correspondence were filed with the spelling "Capital," which was also used in Order No. 2816. However, the contract and other references used the spelling "Capitol." The matter is resolved herein by employing the spelling "Capitol" used in the Certificate of Incorporation issued by the District of Columbia Office of the Recorder of Deeds.

Thus it can be seen how Capitol will acquire use of the three vehicles to perform the service.

Compliance Fitness

This contract was entered into by applicant for the period October 1, 1985, through September 30, 1986. Only after the U.S. Park Police reported to the Commission an apparent unauthorized operation by applicant pursuant to this contract on December 17, 1985, did Capitol file this application on January 16, 1986.

Order No. 2816 noted:

. . . it appears that applicant has already provided service within the Transit District under this contract. This appears to have occurred on at least one occasion, at which time two vehicles were used. One of these vehicles appears to have been a vehicle leased to Blue Lines. The other was a vehicle which counsel for applicant has indicated is not operated within the Transit District. It would appear that this operation was conducted without appropriate WMATC operating authority. Applicant states in Exhibit 7 to this application that ". . . it has operated under lease arrangements with WMATC carriers in performing local transportation service." WMATC Regulation No. 69-10 dealing with equipment leasing states, "Under no circumstances may any operating authority issued by this Commission to any carrier be leased, rented to, or used by any other person."

Order No. 2816 required applicant to explain the matter.

Applicant responds that the cited operation ". . . was by means of a subcontract arrangement with Blue Lines, Inc., and the lease of equipment to Blue Lines pursuant to an approved lease." Responding to the fact that one of the two vehicles used was not leased to Blue Lines, applicant says that ". . . due to an operational oversight, an incorrect unit of equipment was sent and appropriate steps have been taken to avoid this problem in the future." 2/

2/ Even the vehicle which was specified in the Capitol/Blue Lines lease became the subject of some confusion when it was found to bear a license plate other than the one listed in the lease. Applicant subsequently asked that this "minor correction" be made to the lease.

This explanation by applicant shows that the equipment supposedly leased to Blue Lines and required to ". . . be operated by and under the complete control of the lessee, and no other, for the period of the lease . . ." ^{3/} is, in fact, under the control of Capitol. It is difficult to see how Blue Lines could erroneously send a bus it did not have. Nor is there any evidence of Capitol's "subcontract arrangement" with Blue Lines. It is concluded that these vehicles were dispatched by applicant Capitol to provide service it had contracted to provide the U.S. Park Police without the required operating authority. It is concluded that Blue Lines had absolutely no control over either the equipment or the service.

Commission Regulation No. 70 provides that an application of this type will be granted if it is determined that the applicant is fit, willing, and able properly to perform the proposed service and to conform to the provisions of the Compact and the rules, regulations, and orders of the Commission thereunder, and if it is determined that the proposed operations conform to the provisions of Regulation No. 70. The issue of whether the public convenience and necessity requires such service has been determined in Case No. MP-79-04. See Order No. 2004, served June 20, 1979.

The only thing that can impede the granting of a proper Regulation 70 application is a finding that the applicant is unfit. With regard to this particular application, compliance fitness is of primary concern. Compliance fitness means that the applicant is willing and able voluntarily to comply with the requirements of the Compact and the Commission's rules and regulations.

Applicant's entire presentation on this point is disingenuous and undermines the credibility of its explanations. Applicant implies that the prior provision of service under this contract was above reproach because it was conducted ". . . by means of a subcontract arrangement with Blue Lines, Inc., and the lease of equipment to Blue Lines pursuant to an approved lease." This structure attributes the actual operation to neither Capitol nor Blue Lines. There is not simply a subcontract or even a subcontract agreement, but a "subcontract arrangement" conspicuous by its absence. Also, ". . . an incorrect unit of equipment was sent" does not say who sent it.

^{3/} In quoting this language from the approved lease referred to by applicant, it was noticed that the word "entire" has somehow been omitted from the phrase "for the entire period of the lease" which appears in the WMATC lease forms. However, this omission does not change the meaning of the requirement nor does it change the same requirement laid down in Regulation 69-12(a).

In the event its explanations are found wanting, applicant states:

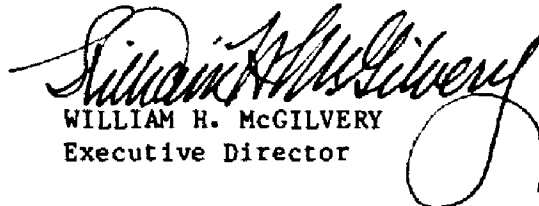
To the extent any prior activities of Capital Bus Rental identified in Order No. 2816 might be interpreted as a failure to completely comply with all WMATC regulations, we believe such actions should not impact on a decision in this matter. Rather, Capital Bus Rental has recently retained counsel in order to prevent any compliance problems in the future.

It is noted that this same counsel was apparently retained by Capitol some time prior to October 9, 1985, on which date counsel first filed a proposed lease of equipment to Blue Lines. The very contract here at issue was entered into effective October 1, 1985. Had this application been filed at that time, it would likely have been a routine matter not overtaken by events that have occurred since then.

This application will be denied for lack of compliance fitness. Applicant is reminded that this determination is made by the Executive Director pursuant to Regulation 70-07 and is subject to reconsideration by the Commission pursuant to Regulation 70-08.

THEREFORE, IT IS ORDERED that the application of Capitol Bus Rental, Inc., trading as Capitol Tours, in Case No. CP-86-02 is hereby denied.

FOR THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director